

¹ The claim form is not of record.

2003 the Office accepted that appellant sustained a recurrence of disability on September 13, 2002.

In progress notes and reports dated February 14 and March 28, 2003, Dr. Chester J. Janecki, appellant's attending Board-certified orthopedic surgeon, diagnosed post-traumatic chronic cervical and lumbosacral sprains, a herniated disc at L5-S1 and a herniated cervical disc by history. He recommended that appellant work the day shift. Dr. Janecki did not indicate that appellant was totally disabled.

On July 21, 2003 appellant submitted a claim for lost wages for December 10 to 11, 2002. She subsequently submitted a claim for lost wages for intermittent dates between January 26 and April 26, 2003.²

By letter dated August 11, 2003, the Office asked appellant to submit medical evidence establishing a work-related disability for December 10 to 11, 2002 and the intermittent dates between January 26 and April 26, 2003.

On August 17, 2003 appellant submitted a December 27, 2002 form report from Dr. Janecki stating that she had ongoing back problems that would "occasionally flare-up causing [appellant] to present for treatment." He indicated that the probable duration of appellant's condition was at least one year. Dr. Janecki stated that she might require one to two days off from work every one to two months.

By decision dated October 7, 2003, the Office denied appellant's claim for compensation for December 10 to 11, 2002 and intermittent dates between January 26 and April 26, 2003 on the grounds that the evidence of record failed to establish any work-related disability on those dates.³

LEGAL PRECEDENT

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

² Appellant indicated that she was unable to work on January 26, February 24 and 25, March 7 and 8, March 28 to 30 and April 26, 2003. She noted that her physician prescribed rest on those dates.

³ The record contains evidence submitted subsequent to the Office decision of October 7, 2003. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; see 20 C.F.R. § 501.2(c).

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.⁵ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.⁶ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁷ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.⁸

ANALYSIS

In a December 27, 2002 form report, Dr. Janecki stated that appellant had ongoing back problems that would "occasionally flare-up causing [appellant] to present for treatment." He stated that appellant might require one to two days off from work every one to two months. However, appellant did not submit any medical evidence such as physicians' reports or progress notes indicating that she in fact received medical treatment on December 10 or 11, 2002 or any dates between January 26 and April 26, 2003 for a medical condition causally related to her February 7, 1998 employment-related lumbosacral sprain. As indicated above, it is appellant's burden to provide medical evidence documenting disability for work on the days for which she seeks compensation for lost wages. She failed to meet this burden.⁹

CONCLUSION

The Board finds that appellant failed to establish that she had any disability or medical condition on December 10 or 11, 2002 or between January 26 and April 26, 2003 causally related to her February 7, 1998 employment injury.

⁴ *Gloria J. McPherson*, 51 ECAB 441 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁵ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁶ *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁷ *Edward E. Olson*, 35 ECAB 1099 (1984).

⁸ *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003); *Donna L. Mims*, 53 ECAB ____ (Docket No. 01-1835, issued August 13, 2002).

⁹ The record contains evidence received by the Office after October 7, 2003. The Board's review of a case is limited to evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7, 2003 is affirmed.

Issued: June 28, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member